



No. **77-213**

**In the Supreme Court of the
United States**

October Term, 1977

Glenn E. Bandelin, Petitioner

v.

L. E. Pietsch, Sandpoint News-Bulletin, Inc.;
Morgan Monroe, Respondent

**RESPONDENTS' BRIEF IN OPPOSITION
to Petition for Writ of Certiorari**

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SUBJECT INDEX

	<u>Page</u>
1. Counter Statement of Facts	1
2. Argument	
This Case Should Not Be Reviewed by the Supreme Court	
I. The Supreme Court of Idaho Has Decided This Case Strictly in Accordance with the Guidelines Laid Down by the U. S. Supreme Court in <u>Gertz v. Welch</u>	3
II. The Idaho Court Has Upheld the First Amendment	6
III. No Issue of Material Fact was Presented	6
3. Conclusion	8
4. Table of Cases	i

TABLE OF CASES

	<u>Pages</u>
<u>Bandelin v. Sandpoint News-Bulletin,</u> et al, 563 P.2d 395	3
<u>Belli v. Curtis Publishing Company,</u> 25 Col.App.3d 384	8
<u>Gertz v. Welch</u> , 418 U.S. 323	3, 4, 6, 8
<u>New York Times v. Sullivan,</u> 376 U.S. 254	3, 7
<u>Rosenblatt v. Baer</u> , 383 U.S. 75	7
<u>Time, Inc. v. Firestone</u> 424 U.S. 448	7
<u>Time, Inc. v. McLaney,</u> 406 F.2d 565, Cert. Den. 395 U.S. 922	8
<u>Time, Inc. v. Pate</u> , 401 U.S. 279	7
<u>Washington Post v. Keogh</u> , 365 F.2d 965, Cert. Den. 385 U.S. 1011	8

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RESPONDENTS' BRIEF IN OPPOSITION
to Petition for a Writ of Certiorari to
the Supreme Court of Idaho

COUNTER STATEMENT OF FACTS

We cannot accept Petitioner's Statement of Facts. Petitioner repeatedly makes ascertions which are not borne out by the record.

The Court found that Bandelin was prominent in the local politics of Bonner County, had been a representative in the State Legislature, was a leading attorney, and was well known throughout the county.

Bandelin was appointed guardian of the person and estate of an elderly client, Mrs. Talbot. Bandelin's handling of the guardianship was so grossly improper

that Judge Towles, on examining his purported accounting, rejected the accounting and ordered a new, full accounting to be filed in ten days, ordered Bandelin to post a bond in the amount of \$100,000.00 and ordered the prosecuting attorney to initiate contempt proceedings against Bandelin.

The prosecuting attorney then filed an affidavit which stated that, based upon the order of Judge Towles, it appeared that Bandelin had wilfully neglected and violated his duties as guardian and had obstructed the proceedings of the Court "which constitutes contempt of the authority of the Court."

Next, Judge Prather issued an Order to Show Cause directed to Bandelin which stated that, from the order of Judge Towles, it appeared that Bandelin "did act and omit to act - in contempt of the authority of the Court."

The above mentioned Court proceedings were what initiated the report in the newspaper. These reports covered in considerable detail, not only the guardianship but also the contempt proceedings against Bandelin. None of the stories referred to Bandelin's acts as a private attorney or his private life.

Misstatements appeared in the second and third issues of the newspaper. They referred to two Sandpoint attorneys "judged in contempt of a District Court decision and order concerning their handling of the guardianship". Although Bandelin

was later judged in contempt by the District Court, at the time these accounts were written, his case had not yet come to trial and, hence, he had not yet been adjudged in contempt. Susequent issues of the newspaper dealt with the new developments in the court cases as they occurred and did not contain any erroneous statements regarding Bandelin.

ARGUMENT

THIS CASE SHOULD NOT BE REVIEWED BY THE SUPREME COURT

I.

THE SUPREME COURT OF IDAHO HAS DECIDED THIS CASE STRICTLY IN ACCORDANCE WITH THE GUIDELINES LAID DOWN BY THE U. S. SUPREME COURT IN GERTZ V. WELCH.

In deciding this case, the Idaho Supreme Court carefully reviewed the decisions in New York Times v. Sullivan, 376 U.S. 254 and its progeny, especially Gertz v. Welch, 418 U.S. 323, which described the basis for determining when a person is a public figure in libel cases. The Idaho Court stated (pages 20, 21 and 22 of Petitioner's brief):

"The United States Supreme Court in Gertz said that the designation of a public figure may rest on two alternative bases:

" 'In some instances an individual may achieve such pervasive fame or notoriety that he becomes a public figure for all

purposes and in all contexts. More commonly, an individual voluntarily injects himself or is drawn into a particular public controversy and thereby becomes a public figure for a limited range of issues.' 418 U.S. at 351.

"A review of the record reveals that Bandelin was prominent in the local politics of Bonner County, had been a representative in the State Legislature, was a leading attorney, and was well known throughout the county. Counsel for Bandelin argues, however, that in recent years Bandelin's public role has subsided—that he has reverted to the 'simple small-town lawyer he was before he gained notoriety'. We concede that a public figure can revert back to the 'lawful and unexciting life lead by the great bulk of the community'. Prosser, Law of Torts, at 107 (1st ed. 1941.) But it is far more common that a public figure will retain residual elements of his former status even when he returns to private life.

"However, we do not affirm the District Court's decision exclusively on the prominence that Bandelin enjoyed in the local community. We are sensitive to the consequences of being a public figure and we do not assume that a citizen's participation in community and professional affairs automatically renders him a public figure. We follow the approach of the Supreme Court in Gertz:

" 'It is preferable to reduce the public-figure question to a more meaningful context by looking to the nature and extent of an individual's participation in the particular controversy giving rise to the defamation (or invasion of privacy)'. 418 U.S. at 352.

"In the present case, Bandelin as the guardian of the estate of Murial I. Talbot was the center of the controversy that gave rise to the Sandpoint News-Bulletin's publications. The Sandpoint News-Bulletin initiated its coverage of the Talbot case when it became aware of the trial judge's criticism of Bandelin's handling of the Talbot guardianship. Under such circumstances, Bandelin cannot maintain that he is not a public figure and was just an attorney handling the probate affairs of a client. He was rather the Court appointed guardian, a pivotal figure in the controversy regarding the accounting of the estate that gave rise to the defamation and invasion of privacy actions."

Judge Towles, in his Memorandum Decision, had said that a guardianship is one of the highest fiduciary duties authorized by the statutes of the state and that Bandelin had violated those duties. The newspaper's exposure of those violations to public view was in the public interest. Also this was a matter of local concern and the publication was in a local newspaper.

II.

THE IDAHO COURT HAS UPHELD THE FIRST AMENDMENT

Since the Idaho Courts have upheld the first amendment declaring that the publications were privileged, we believe there is no need for Supreme Court review. The Court has said in Gertz that the states, so long as they do not impose liability without fault, may define for themselves the appropriate standards of liability for a publisher of defamatory falsehood injurious to a private individual. Therefore, the states could require proof of actual malice in all cases if they wished. Hence, the Supreme Court should not be concerned if the states apply first amendment protection for publications concerning public officials or public figures more broadly than the Supreme Court requires. There is a need for Supreme Court review only if there is a possibility the state has failed to provide constitutional protection when required.

III.

NO ISSUE OF MATERIAL FACT WAS PRESENTED

The Trial Court and the Idaho Supreme Court both found that no issue of material fact was presented by the affidavits and depositions. First, the Trial Court found that Bandelin was both a public official as a court appointed guardian and a public figure.

"It is for the trial judge, in the first instance, to determine whether the proofs show (plaintiff) to be a 'public official'." Rosenblatt v. Baer 383 U.S. 75 at page 87.

Then the Trial Court determined that plaintiff was not able to establish actual malice with convincing clarity as required by New York Times and granted Summary Judgment. This was affirmed by the Idaho Supreme Court. Both Courts relied strongly upon Time, Inc. v. Pate 401 U.S. 279 which held that a reporter's rational interpretation of an ambiguous document is constitutionally protected when the test is whether the publisher acted in reckless disregard of the truth. Time, Inc. v. Firestone 424 U.S. 448 did not disagree. See footnote 4 of that opinion.

Petitioner urges that a jury should have been allowed to consider the repetitious nature of the publications, along with the tone of the publications to determine whether there was actual malice. The Court correctly held that such matters did not establish malice with convincing clarity. We submit that neither repetition nor the tone of the publications can show knowledge of falsity or reckless disregard of the truth.

Petitioner contends that the reporter's veracity as a witness was challenged by a contradictory affidavit from one of his alleged sources thus raising an issue of fact requiring a jury trial. This same point

was determined adversely to petitioner in both Courts below and is not a matter requiring review in this Court as it raises no constitutional issue. Furthermore, the contradictory affidavits dealt with the reporter's source for the statement that the Talbot case was "puzzling" and that the legal community was "shaken". These words were entirely non-defamatory and the reporter's reasons for using them are immaterial.

Respondent's affidavits and depositions showing lack of knowledge of falsity and no reckless disregard of truth with respect to the only false statements published were entirely uncontroverted and, therefore, Summary Judgment was required.

Time, Inc. v. McLaney 406 F.2d 565

Cert. Den. 395 U.S. 922

Washington Post v. Keogh 365 F.2d 965

Cert. Den. 385 U.S. 1011

Belli v. Curtis Publishing Company

25 Coll.App.3d 384

CONCLUSION

No new, novel, or different question of law is presented by this case. It falls well within the guidelines set forth by this Court in Gertz and was decided in accordance with those guidelines.

The State Courts have decided that no issue of material fact exists. The Supreme Court is not required to review such a decision.

Respectfully submitted,
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